



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/083,975

02/27/2002

Brent S. Nelson

006943.00615

6913

66811

7590

03/31/2008

BANNER & WITCOFF, LTD.
and ATTORNEYS FOR CLIENT NO. 006943
10 SOUTH WACKER DR.
SUITE 3000
CHICAGO, IL 60606

EXAMINER

WEINSTEIN, STEVEN L

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

03/31/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/083,975	Applicant(s) NELSON, BRENT S.	
	Examiner Steven L. Weinstein	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-20 and 38-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-20 and 38-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claims 1,4-9,52, and 38-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ota et al (5,222,615) in view of Leigner (5,092,474), Tobias et al (5,762,221) and Ogg (6,044,997), further in view of Sugiura (4,749,092), Ota (5,238,129), Brody(5,740,934), Hayashi (4,877,141), and Welker(3,923,178), and further in view of Wiley Encyclopedia of Packaging Technology (hereinafter called "Wiley"), essentially for the reasons fully detailed in the Office actions mailed 9/18/07 and previously.

Claim 1 (and claim 39) now recites that the panel sections are smooth and virtually flat. As discussed previously, the art taken as a whole fairly teaches one of ordinary skill in the art that one can have pressure deflecting panels that can either have surface deformations, if you will, or have flat surfaces. There is nothing magic in the fact that the panels can be flat and/or smooth and can still undergo deflection in response to either positive or negative pressure differentials. As noted previously, the art teaches both embodiments, flat or non-flat panels. Both types of panel structure can be pressure deflected. As also noted previously, the art taken as a whole discloses that surface structure, in or on the panels, helps control the degree of flexing, but in no way discloses that flexing will not occur without the additional panel surface elements. In fact, even if the art did not specifically teach that flat, smooth panels can deflect (which it does), the clear implication in the references that teach non-flat panels is that the surface structure is added to control the deflection that occurs in flat panels. Another way to look at it, is that the art taken as a whole would not have known that the non-flat panels would control deflection if they hadn't first employed flat panels. Claim 1 now

Art Unit: 1794

also recites horizontal ridges isolating the body portion from the bell and base portion.

This recitation has also been addressed previously. The art cited is replete with examples of what the claims recite as "ridge" structure. This structure is a common expedient in the art to enhance rigidity of the overall container (which any change in direction of a surface inherently does) and also provides a demarcation for labelling.

The claims recite that the panels extend from one ridge to the other. Beside the fact that the claims do not positively recite that the ends of each panel contact the ridges (and thus allow for the panels to extend to but not necessarily meet the ridges), the art taken as a whole show all types of variations such as Sugiara whose panels substantially extends to the ridges and Brady whose panels meet the ridges. Therefore, the extent of the panels vis-a vis the ridges is seen to have been an obvious result effective variable, routinely determinable in view of the art taken as a whole and the fact that the ridges are known for their rigidity and label positioning. Claim 1 also now recites that the smooth outer surfaces of the panel sections and the smooth corners define a continuous outer surface that is devoid of additional surface structure. It is again noted that terms such as smooth are relative as are the terms flat and continuous. For example, the specification discloses rectangular panels, but the drawing specifically does not show them to be truly rectangular since they bow and are not perpendicular to the adjacent panels. In any case, as noted previously, the art taken as a whole (e.g. Sugiara et al, Brady and Wiley) disclose panel containing body portions wherein the panels adjoin other panels by corners which can have curvature. Note, too, whether the corners are curved or angular, the outer surface would still be considered continuous.

Art Unit: 1794

Also, the degree of curvature or angularity of the corners is seen to have been an obvious matter of choice and/or design. As disclosed, the so-called continuity of the rectangular panel and the curved corners is to allow good attachment for a label, which has nothing to do with the issue of panel deflection. Thus, it is irrelevant whether the leftmost container of Wiley is capable of being hot-filled or not, since the issue is label application and the art is replete with references that disclose panel deflection and fairly teaches panel deflection occurs whether the panels have surface structure or not. Note e.g., that Brady discloses that in the pressurized state, the label is unfettered with wrinkles or other irregularities. In conclusion, as noted previously, the art taken as a whole are properly combinable since they are directed to differential pressure deflection no matter what the cause, and that the art taken as a whole disclose that the claims recite a series of conventional expedients which are applied for their art recognized and applicants intended function with no new or unexpected result derived therefrom.

Claims 10-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiley Encyclopedia of Packaging Technology in view of applicant's admission of the prior art, further in view of Visioli ('901) and Wright et al ('353), for the reasons of record.

Claims 46-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1,4-9,52, and 38-45 above, and further in view of applicant's admission of the prior art, Visioli and Wright who are applied for the reasons of record mailed and above.

All of applicants remarks have been fully and carefully considered but are not found to be convincing for the reasons of record and the additional comments made above.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M.-2:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1794

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steve Weinstein/
Primary Examiner, Art Unit 1794